

REMARKS

Claims 49-93 are currently pending. Applicant has canceled Claims 75 and 91-93. Independent Claims 49, 51, 55, 57-59, 68, 74, 76, 78, and dependent Claims 88 and 89 have been amended. Accordingly, after entry of the present amendment Claims 49-74 and 76-90 will be pending.

Claim Objections

The Examiner has indicated, "A claim which depends from a dependent claim should not be separated by any claim which does not also depend from said dependent claim. The Examiner has respectfully requested that claims, such as Claim 77 that depend on Claims 49, 57, or 58, follow this format.

In an effort to preserve consistency, continuity, and to more efficiently and effectively address the Examiner's substantive rejections with a minimum of confusion, Applicant respectfully requests that such claim amendments be held in abeyance until completion of prosecution.

Claim Rejections – 35 U.S.C. §112

The Examiner has rejected at least Claims 49, 51, 55, 57-59, 68, 74-76, 88-89, 91-93 for various reasons. In this regard, Applicant has canceled Claims 75 and 91-93, and amendment the remaining identified claims to overcome any §112 rejections.

Claim Rejections 35 U.S.C. §102/103

The Examiner has rejected Claims 49 and 88 under 35 U.S.C. §102(b) as allegedly being anticipated by Dorne (5,325,293); Claims 57-62, 64-69, 72-77, 79, 86-87, 90-91, and 93 under 109(e) as allegedly being anticipated by Kraftson et al. (6,151,581); Claims 50-56, 63, 77-78, 80,

85, and 89 under 103(a) as allegedly being unpatentable over Dorne (5,325,293) in view of Kraftson (6,151,581); Claims 70-71, 73, 81, 83, and 84 under 103(a) as allegedly being unpatentable over Kraftson et al. (6,151,581) in view of Letzt et al. (5,612,869); Claim 82 under 103(a) as allegedly being unpatentable over Dorne (5,325,293) and Kraftson et al. (6,151,581) as applied to Claims 51 and 55, and further in view of Letzt et al. (5,612,869); and Claim 92 under 103(a) as allegedly being unpatentable over Kraftson et al (6,151,581) as applied to Claim 91.

Due to the above noted §112 rejections, examination of the independent claims in the outstanding Office Action was limited to those elements of each independent claim not affected by the rejections. In other words, various elements or steps that may have been important in distinguishing over the prior art were not considered.

For example, in considering independent Claim 49 the Examiner considered only an electronic means to repeatedly prompt for various information and record that information, and processing means for calculating intermediate values based on said recorded information, and for using said intermediate values to generate said billing code. In regard to other elements not considered by the Examiner, the Examiner indicated, "As the claim is presently recited, it appears that Applicant is simply claiming the benefits of the apparatus or intended uses of the apparatus rather than specific structural elements of the apparatus."

At least in regard to the independent claims rejected under §112, those claims have been amended to make clearer and to positively recite various elements and/or steps that define the novelty and non-obviousness of Applicant's invention. Accordingly, examination of those claims may now proceed as originally intended.

Among other things, none of the references, alone or in any permissible combination, disclose or make obvious Applicant's claimed combination of elements including:

“Apparatus for gathering medical information regarding a patient and generating a billing code related to that information, including:

electronic means including:

a prompting means to repeatedly generate real-time prompts for various information including medical services being provided; and

a recording means for recording the information,

wherein said prompts include:

a guiding means for guiding by a physician during an interaction with a patient and a reminding means to remind the physician regarding specific points of inquiry relevant to further examination of that patient, and

a soliciting means to solicit underlying information regarding the details of the medical service being provided, said underlying information being usable for calculating a medical service code based upon said underlying information, said underlying information being necessary for determining and supporting the medical services code for purposes of the physician eventual billing for the services;

the electronic means further including:

a processing means for calculating intermediate values based on said recorded information; and

a processing means for using said intermediate values to generate said billing code. (see, for example, Claim 49 as amended).

Dorne U.S. Patent No. 5,325,293

Dorne's summary of invention shows why it is inapposite to the present application. Dorne states that "The present invention comprises a system and a method for correlating

medical procedures into billing codes." (Column 3, lines 1-20) In this regard, Dorne makes clear that his invention relates solely to medical procedures: "The AMA has structured the CPT (Current Procedural Terminology) coding system into five main procedure rubrics: (1) Medicine; (2) Anesthesia; (3) Surgery; (4) Radiology; and (5) Pathology." (Column 1, lines 32-33) Dorne's invention is limited solely to these five sections of the CPT. Dorne focuses throughout the disclosure on the procedures used by radiologists, emphasizing the Surgery and Radiology sections of the CPT manual. However, the American Medical Association (AMA) has structured the CPT coding system into six total sections: the five identified by Dorne and an additional section, the Evaluation & Management (E&M) codes, which is actually the first section of the CPT manual. While Dorne deals solely with the five procedural sections, the instant application deals solely with the Evaluation & Management Codes.

The distinction in the two inventions is best explained by way of example. In the case of Dorne, the physician performs a procedure on (or relating to) a patient, such as a diagnostic test or a surgical intervention. Each test or surgical intervention has an actual number in the CPT coding guideline. It is the case that radiologists, when billing, the radiologist cannot always simply bill by presenting all of the code numbers indicated in the CPT book which correspond to a body part that has been radiologically assessed or treated (the "raw codes" to use Dorne's parlance). Instead, the radiologist or physician may need to "combine" the individual codes in order to determine the final coding. Dorne discloses a method for "combining" individual procedure codes in such a way as to determine the final coding. In Dorne, the radiologist knows what procedure needs to be done. For example, if the patient has a heart problem, the radiologist knows that a radiological procedure will be performed to visualize the arteries in and around the heart. Accordingly, the raw code for each procedure is known and does not have to be

constructed. The physician immediately knows what procedure he or she is performing and enters the corresponding raw code. Dorne simply helps the physician, if necessary, combine these known raw codes in such a way as to comply with billing requirements.

Unlike Dorne, the present application, determines the appropriate final Evaluation & Management code, something neither needed nor envisioned by Dorne. Furthermore, in contrast to Dorne, the health care worker does not know in advance what the E&M raw code is, and further, can only determine the raw code by means of a complicated process. This is because E&M codes pertain to an encounter between a patient and a physician (or other health care worker) in which the health care worker does not and often cannot know ahead of time what questions will need to be asked, what kind of physical examination will need to be performed, how many body parts will need to be examined, what kinds of considerations will go into treating the patient or further evaluating the patient, etc. The final raw code depends on the complexity of the evaluation, i.e., the level of history, physical examination, and medical decision making. The present invention discloses a method of simplifying the complex process of determining the E&M code by generally prompting, guiding, and soliciting information/data for recording, processing, and calculating an associated raw code for billing purposes.

Kraftson U.S. Patent No. 6,151,581

As discussed in prior submissions, Kraftson does not include any mention of: (1) the Health Care Financing Administration (now called Centers for Medicare & Medicaid Services, as noted above); and (2) government billing codes/programs. Accordingly, Applicant respectfully submits that Kraftson has little, if any, relevance to the patentability of Applicant's claimed invention as it relates to HCFA, especially as Applicant's claims are amended herein.

Among other things, the complexity of the HCFA codes, the central nature of their function within the present medical services industry, and other factors are not within any aspect of the disclosure of Kraftson. Instead, Kraftson focuses on "patient clinical information and patient satisfaction information received from a group of physician practices to provide practice performance information" (Column 2, lines 52-56). By way of example, Kraftson teaches surveying patients regarding, among other things, the patient's opinion (on a scale of 1-5) of the "Availability of convenient parking/public transportation" (Column 6, line 62-67). Again, nothing in Kraftson, or any prior art of which Applicant is aware, alone or in any permissible combination thereof, discloses or makes obvious Applicant's claims as amended. With respect to the successive points, applicant respectfully requests clarification.

In view of the prior art and its lack of apposite teachings supporting the Examiner's anticipation and obviousness rejections, and in view of the amendments set forth above, it is thought that the application is now dominant in condition for allowance, notice whereof is respectfully requested of the Examiner.